

Scottish Parliament Regions: South of Scotland

Case 200601472: East Lothian Council

Summary of Investigation

Category

Local government: Repairs and maintenance of housing stock

Overview

The complainant (Ms C) was aggrieved at East Lothian Council (the Council)'s decision to require her to pay a £69 access charge in order to allow her gas appliances to receive an annual check. She complained that the new procedure was not explained sufficiently to tenants and that the Council were unreasonable in requiring her to pay this given that she had made attempts to provide access.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council were unreasonable in requiring her to pay an access charge of £69 (*not upheld*); and
- (b) the Council failed to explain sufficiently the new system to tenants (*partially upheld*).

Redress and recommendations

The Ombudsman recommends that:

- (i) in the particular circumstances which applied to Ms C, the Council reconsider their demand that she pay the £69 access charge; and
- (ii) in this case, as there appeared to be some confusion about access visits and requests for access visits, the Ombudsman suggests that the Council review the terms of their standard letters and those of British Gas.

The Council have declined to accept the Ombudsman's recommendations.

Main Investigation Report

Introduction

1. On 22 August 2006, the Ombudsman received a complaint from Ms C about East Lothian Council (the Council)'s new access policy to make annual gas appliance checks. Ms C said that the Council had charged her £69 as they had concluded that she had failed to give access to her home on two occasions. She maintained that this was incorrect as the gas engineer only called at her home once and that, while she had stayed in all day to wait for him, he had called when she was on the school run. Ms C said that later she telephoned British Gas direct to arrange a mutually convenient appointment but that no one called at her home. In all the circumstances, she believed that the Council's decision to levy the charge was unreasonable and that they had failed to properly explain the new access system to their tenants.

2. The complaints from Ms C which I have investigated are that:

- (a) the Council were unreasonable in requiring her to pay an access charge of £69; and
- (b) the Council failed to explain sufficiently the new system to tenants.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Ms C, the Council and British Gas. I have also had sight of a standard letter dated 14 March 2006 addressed to all the Council's tenants explaining the new system concerning the annual service of gas appliances, a copy of the Council's Summer 2006 Newsletter to tenants and an extract from Ms C's telephone bill covering 10 and 11 July 2006. On 15 January 2007 I made a formal enquiry of the Council and received their reply dated 25 January 2007.

4. While I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Ms C and the Council were given an opportunity to comment on a draft of this report.

(a) The Council were unreasonable in requiring her to pay an access charge of £69

5. Ms C said that on 19 June 2006 she received a letter saying that a gas check would be carried out on her appliances on 29 June 2006. She said that she did not see the necessity for this as her central heating system had only

been installed in December 2005 and had a safety certificate valid until December 2006, however, she nevertheless stayed in all day apart from the time she went to pick up her children from school. However, when she returned she found that the engineer had called when she was out and left her a card. The next day, she and her husband and family went on holiday not to return until midnight on 10 July 2006 when she found a letter dated 7 July 2006 from British Gas. This Final Access Letter said that because they had tried twice for access, they were now looking to get into her house and gave a contact number to call with office availability times. The letter also said that failure to respond within ten days would result in the Council being advised, in order that they may take appropriate action. Ms C said that on seeing the letter, because she was upset, she rang the number straight away (at about midnight) and, was surprised to be connected to a person who arranged for a Gas Engineer to call on 14 July 2006. Despite staying in all that day, she said that no one came to the house but, that on 26 July 2006, she received a letter from the Council advising that they now required access on 3 August 2006 between 08:00 and 16.30 and that, even if access was possible (that is, not forced), she would be required to pay a £69 administrative charge.

6. Ms C said she thought that this was 'ridiculous'. She contended that although British Gas maintained that they had tried to access her house twice, she said they only called on 29 June 2006 when she missed the engineer because she had to collect her children from school. She also said that she had arranged another appointment for 14 July 2006 but that no one had turned up. She complained that the Council had failed to properly explain the access process and that their demand for £69 was unreasonable.

7. In reply to my enquiries (by their letter of 25 January 2007), the Council explained that they had a legal obligation to ensure that all gas appliances in their properties received an annual service and safety check. Accordingly, the Council contracted with British Gas to make inspections on their behalf and in March 2006 all Council tenants were sent a standard letter (a copy of which I have seen) explaining the new procedure which was to take effect from 15 May 2006. Amongst other things, the letter said:

'Our appointed contractor or [the Council]'s direct labour force try to make arrangements on at least two occasions prior to planning a potential forced access, by writing to you with an appointment. If this is unsuitable, you are given an opportunity to make an alternative appointment at a more convenient time.

If, however, you have not made contact with them to arrange access, and our contractor or direct labour have been unsuccessful in gaining entry to complete this work, you will be put into [the Council]'s Access Procedure. At this time, you will automatically incur a charge for the administration costs associated with this process.

You will then receive a hand delivered Final Access Letter from [the Council]. Even if you allow access on the day of this appointment, you will incur a charge of £69.00.'

8. This information was later confirmed in the Summer 2006 edition of 'Homefront', the Council's newsletter to tenants. The Council further explained that as they had almost 7000 gas properties requiring an annual service and safety check, they were unable to give specific time slots and only a morning or afternoon appointment could be given. They said that in their view, in order to permit access, they did not think it unreasonable to give ten day response times or expect tenants to arrange for a relative, friend or neighbour to be in the property for a short time if children had to be taken or collected from school.

(a) Conclusion

9. It is not in dispute that Ms C received a letter on 19 June 2006 or that she missed the Gas Engineer on 29 June 2006 because she had gone to collect her children. Also, that the Gas Engineer left a card when she was out asking her to make another appointment. She did not do so immediately as she was going on holiday the next day, but, while she was away another letter was sent dated 7 July 2007 saying that access was essential and giving a number to call to arrange an appointment. However, Ms C disputes that British Gas tried to access her property twice, she said that this was only once, that is, on 29 June 2006. But the information available to me confirmed that by drop card left that day (29 June 2006) British Gas also requested Ms C to make another appointment but she did not do so (see paragraph 5). They had by then, therefore, technically, in line with the information supplied in 'Homefront' (see paragraph 8), made two attempts at access. It was only on receipt of the letter of 7 July 2006 (that is, the third attempt to arrange access) that Ms C telephoned but, as far as the Council were aware, there had been no response from Ms C and, therefore, the letter of 25 July 2006 was sent (see paragraph 5).

10. Nevertheless, Ms C rang British Gas and I have seen her telephone records confirming this, but I am aware that although they have checked with British Gas, the Council have been unable to find any record of Ms C's conversation. The fact that the call was made out-of-hours, and not during the times directed on the letter of 7 July 2006, may go some way to provide an explanation and the Council have pointed out to me in their response of 25 January 2007 that there was no need for Ms C to call at midnight on 10 July 2007 as the letter allowed until 17 July for contact to be made. However, it seems to me that the fact that Ms C made a call demonstrated her willingness, at this stage, to comply with the Council's request for access.

11. It is my belief that for whatever reason, and even though the information was clear (paragraphs 7 and 8), Ms C had not appreciated the seriousness of her failure to give access until she found the letter of 7 July 2006 on her return from holiday. She then sought to make the appropriate arrangements, albeit that her timing was unconventional. This being the case, it is not surprising that the Council were unaware of her attempt to contact British Gas and make an appointment, hence the letter of 25 July 2007 was sent (see paragraph 5). Taking this into account, I do not consider that the Council were unreasonable in sending the letter of 25 July 2006 informing her that there would now be a £69 charge and I do not uphold the complaint. However, on presentation of the evidence of Ms C's telephone call to British Gas on 10 July 2006, which seems incontrovertible, I believe the Council were perhaps unduly harsh in then requiring her to pay the penalty sum. In commenting on the draft report, the Council told me that they did not agree but, the Ombudsman requests that in these particular circumstances, they reconsider this decision.

(a) Recommendation

12. The Ombudsman requests that in the particular circumstances which applied to Ms C, the Council reconsider their demand that she pay the £69 access charge. Further, that in this case, as there appeared to be some confusion about access visits and requests for access visits (see paragraphs 6 and 9), the Ombudsman suggests that the Council review the terms of their standard letters and those of British Gas.

(b) The Council failed to explain sufficiently the new system to tenants

13. Prior to the introduction of this new system in May 2006, in March 2006, the Council issued letters to all their tenants explaining how it would work. The Summer 2006 edition of the tenants' newsletter also reinforced the information

(see paragraphs 7 and 8). I have seen both these documents and they are clear. However, I found the correspondence somewhat confusing (see paragraph 12). I can appreciate, therefore, why this may have caused Ms C similar confusion.

(b) Conclusion

14. I partially uphold the complaint to the extent that the correspondence between the Council, British Gas and Ms C was unclear.

15. In commenting on this report at draft stage, the Council stated that they did not agree that the correspondence was unclear and they declined to accept the Ombudsman's recommendations.

18 July 2007

Explanation of abbreviations used

Ms C

The complainant

The Council

East Lothian Council